

2012 Council Study Issue

CDD 12-11 Consider Adding Criminal Background Checks to Below Market Rate (BMR) Program Qualification Process

Lead Department Community Development

History 1 year ago None 2 years ago None

1. What are the key elements of the issue? What precipitated it?

This study will evaluate the ability to require applicants participating in the City's Below Market Rate (BMR) Programs to undergo a criminal background check at the time their initial eligibility application is submitted for program approval. This issue arose when an individual who purchased a BMR unit was arrested and charged with committing a crime. However, this occurred after the purchase of the BMR unit. Other than this one extreme example, this has not been an issue for the BMR program. Extensive screening of BMR applicants is conducted although the focus is on ability to obtain loan financing and household and income qualifications. Lending institutions also conduct extensive credit checks for mortgage loans.

This issue will require more in-depth research from City Attorney and Community Development staff to explore the legality and viability of requiring background checks for BMR Program participants. Additionally, the study will assess possible Fair Housing challenges and City exposure associated with denying applicants from the program as a result of negative criminal information.

The City's initial statutory and case law review has determined that the City's Housing Division is most likely precluded from performing background checks on BMR applicants. California Penal Code section 11081 and 11105 et. seq., limits access to Department of Justice criminal history information only to limited agencies expressly enumerated in the statute. Currently, only Public Housing Authorities that administer Section 8 housing programs or operate housing for minors or persons categorized as aged, blind or disabled have been granted this access. The City's Housing Division is not a Public Housing Authority for purposes of this statute and therefore would not have access under these provisions.

If Council directs staff to move forward with the criminal background check Study Issue, staff will need to identify funding for each inquiry, adjust staff priorities to administer this new requirement and manage dispute resolution.

The study will include researching various state and federal laws and cases and reviewing other policies from surrounding jurisdictions to determine the legality of performing criminal background checks for BMR Programs. The ability to deny access to a BMR unit based on this information would also be analyzed.

2. How does this relate to the General Plan or existing City Policy?

Housing and Community Revitalization Sub-element:

Equal Housing Opportunities and Special Needs

Goal E - Promote equal housing opportunities for all residents, including Sunnyvale's special needs populations, so that residents can reside in the housing of their choice.

Policy E.1 Support the provision of fair housing services and tenant/landlord mediation to

residents.

Policy E.2 Implement City ordinances regarding prohibition of discrimination in housing.

3. Origin of issue

Council Member(s) Whittum, Davis

4. Staff effort required to conduct study Moderate

Briefly explain the level of staff effort required

This issue will require research and policy planning from City staff (OCA and CDD) to determine the legal issues surrounding the City's ability to require criminal background checks for local housing programs, potential Fair Housing issues as a result of disqualification determinations and a dispute resolution policy.

5. Multiple Year Project? No Planned Completion Year 2012

6. Expected participation involved in the study issue process?

Does Council need to approve a work plan? No

Does this issue require review by a Board/Commission? Yes

If so, which? Housing and Human Services
Commission

Is a Council Study Session anticipated? Yes

7. Briefly explain if a budget modification will be required to study this issue

Amount of budget modification required 0

Explanation

NA

8. Briefly explain potential costs of implementing study results, note estimated capital and operating costs, as well as estimated revenue/savings, include dollar amounts

Are there costs of implementation? Yes

Explanation

Costs associated with performing the initial background check, reviewing report results and administering applicant inquiries as a result of the findings.

9. Staff Recommendation

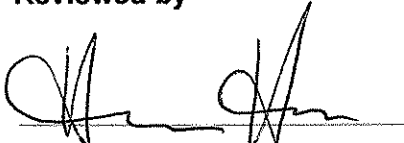
Staff Recommendation Drop

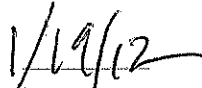
If 'Support', 'Drop' or 'Defer', explain

Based on the City's initial review of the relevant statutes and cases as described in Section 1, it is highly unlikely that the City's Housing Division would have the authority under the California Penal Code to access Department of Justice records to perform criminal background checks for purposes of applicant screening. The Housing Division is not expressly authorized to access that

information under the Penal Code. Moreover, the Legislature has statutory jurisdiction over the field of regulation for criminal background checks for governmental entities. It is highly doubtful that the City could enact its own ordinance allowing Housing Division access to such information.

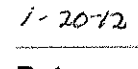
Reviewed by


Department Director


Date

Approved by


City Manager


Date